

**CALIFORNIA COMMUNITY COLLEGES
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Date: November 16, 2010

To: Chief Executive Officers
Community College Attorneys
Public Relations Officers
Chief Student Services Officers
Chief Instructional Officers

From: Steven Bruckman
Executive Vice Chancellor for Operations & General Counsel

Re: AB 540 Litigation
Legal Advisory 10-01

The California Supreme Court has issued its opinion upholding the validity of AB 540. The effect of this ruling is to maintain the status quo regarding students who are subject to the law.

AB 540 created Education Code section 68130.5 and took effect January 1, 2002. Education Code section 68130.5 created an exemption from the payment of nonresident tuition for any student who attended high school in California for three or more years and who graduated from a California high school or attained the equivalent of high school graduation. An estimated 20,000 California Community College students benefit each year from the exemption. This group includes students whose immigration status is undocumented or out-of-status, as well as U.S. citizens who grew up in California but left the state at some point prior to seeking enrollment.

In 2005, a lawsuit was filed in state court seeking to invalidate this law. The law was originally upheld, but on September 15, 2008, the California Court of Appeal reversed that ruling. On November 15, 2010, the California Supreme Court reversed the California Court of Appeal, finding Education Code section 68130.5 valid. A complete copy of the opinion can be found at, <http://www.courtinfo.ca.gov/opinions/documents/S167791.PDF>. Plaintiffs will now likely file a petition for writ of certiorari with the U.S. Supreme Court. If the U.S. Supreme Court grants the petition, i.e., agrees to hear the matter, it could take a year or more for a final resolution of the matter.

While this case is pending, districts must continue to implement Education Code section 68130.5. The AB 540 exemption from nonresident tuition is mandatory. If a district finds

that student meets the requirements of the law, nonresident tuition may not be charged. Legal Advisory 07-01, http://www.cccco.edu/Portals/4/Legal/advisories/attachments/07-01-AB_540_%20guidelines_final.pdf, provides additional information about Education Code section 68130.5.

We will continue to provide updates on the status of the case. If you have any questions concerning the case, you may contact me at (916) 445-9328 or sbruckman@cccco.edu.